

UNITED STATES SENTENCING COMMISSION
Salaries and Expenses
SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS

Fiscal Year 2022 Assumed Appropriation	\$20,829,000
Fiscal Year 2023 Requested Appropriation	\$21,892,000
Requested Increase from Fiscal Year 2022 Assumed Appropriation	\$1,063,000

APPROPRIATION LANGUAGE

UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, [~~\$20,829,000~~]*\$21,892,000*, of which not to exceed \$1,000 is authorized for official reception and representation expenses.

(H.R 4502 - Financial Services and General Government Appropriations Act, 2022)

**SUMMARY OF REQUEST
 UNITED STATES SENTENCING COMMISSION
 SALARIES AND EXPENSES
 FISCAL YEAR 2023
 (Dollar amounts in thousands)**

Fiscal Year 2023 Resource Requirements:

	<u>FTEs</u>	<u>Amount</u>
Fiscal Year 2022 Assumed Obligations.....	95	22,498
Carryforward balance from the Judiciary Information Technology Fund.....	-	(1,669)
Fiscal Year 2022 Assumed Appropriation	95	20,829

Page No. Adjustments to Base to Maintain Current Services:

A. PERSONNEL

Pay and Benefit Adjustments

10.14	1. Proposed 2023 pay adjustment (4.6% for nine months).....	-	612
10.14	2. Annualization of the FY 2022 pay adjustment (2.7% for three months).....	-	127
10.14	3. Promotions and within-grade increases.....	-	170
10.14	4. Benefits increases.....		
	a. Health benefits.....	-	82
	b. FICA adjustment.....	-	9
10.15	5. One less compensable day.....	-	(67)

**SUMMARY OF REQUEST
 UNITED STATES SENTENCING COMMISSION
 SALARIES AND EXPENSES
 FISCAL YEAR 2023
 (Dollar amounts in thousands)**

		<u>FTEs</u>	<u>Amount</u>
B. Other Adjustments			
<i>General Inflationary Adjustments</i>			
10.15	6. Inflationary increases in charges for contracts, services, supplies, and equipment.....	-	130
	Subtotal, Adjustments to Base to Maintain Current Services.....	-	1,063
	Total Current Services Appropriation Required.....	95	21,892
	Total, Fiscal Year 2023 Appropriation Required.....	95	21,892
	Total Appropriation Increase.....	-	1,063
	Total Estimated Obligations, Fiscal Year 2023.....	-	21,892

UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES
Obligations by Activity (\$000)

Activity	FY 2021 Actual	FY 2022 Assumed Obligations	FY 2023 Request
Total Obligations	19,852	22,498	21,892
Unobligated Balance, Start of Year: Judiciary Information Technology Fund	(1,669)	(1,669)	-
Deposits and Other Adjustments: Judiciary Information Technology Fund	-	-	-
Unobligated Balance, End of Year: Judiciary Information Technology Fund	1,669	-	-
<i>Subtotal, Other Obligations</i>	-	<i>(1,669)</i>	-
Direct Obligations	19,852	20,829	21,892
Unobligated Balance, End of Year	113	-	-
Less Offsetting Collections	-	-	-
Appropriation Total	19,965	20,829	21,892

Obligations by Budget Object Class (\$000)

Description	FY 2021 Actual	FY 2022 Assumed Obligations	FY 2023 Request
11 Personnel compensation	11,164	12,819	13,624
12 Personnel benefits	4,023	4,763	4,963
21 Travel	76	157	400
22 Transportation of things	2	3	6
23 Rent, communications and utilities	23	26	25
24 Printing and reproduction	155	129	117
25 Other services	2,433	1,476	1,215
26 Supplies and materials	34	157	150
31 Equipment	1,942	1,299	1,392
Direct Obligations	19,852	20,829	21,892
Other Obligations (JITF Obligations)	-	1,669	-
Total Obligations	19,852	22,498	21,892

UNITED STATES SENTENCING COMMISSION
SALARIES AND EXPENSES
Relation of Obligations to Outlays (\$000)

	FY 2021 Actual	FY 2022 Assumed Obligations	FY 2023 Request	Difference (+) or (-)
Direct obligations incurred	19,852	20,829	21,892	1,063
Obligated balance, start of year	4,030	4,160	3,652	(508)
Adjustments of prior year activity	(132)	(138)	(146)	(7)
Obligated balance, end of year	<u>(4,160)</u>	<u>(3,652)</u>	<u>(3,025)</u>	<u>627</u>
Total Outlays	19,590	21,199	22,373	1,175
Less Offsets	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net Outlays	19,590	21,199	22,373	1,175

Personnel Summary

	FY 2021 Actual	FY 2022 Assumed	FY 2023 Request	Difference (+) or (-)
Total compensable workyears:				
Full-time equivalent employment	95	95	95	0

GENERAL STATEMENT AND INFORMATION

The Sentencing Reform Act of 1984 created the United States Sentencing Commission (Commission) as an expert independent agency within the judicial branch, whose seven voting members, including the Chair, are nominated by the President and confirmed by the Senate. By statute, no more than four Commissioners can be from the same political party, and at least three must be federal judges, thereby ensuring a bipartisan Commission of diverse backgrounds.

The statutory duties of the Commission include:

- promulgating federal sentencing guidelines to be considered by sentencing judges in all federal criminal cases;
- collecting, analyzing, and reporting sentencing data to detect criminal trends, assess federal sentencing policies, and serve as a clearinghouse for federal sentencing statistics;
- conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and
- providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community concerning the federal sentencing guidelines and federal sentencing generally.

The Commission's sustained strategic investment in technology, automation, and cybersecurity enabled it to maintain operations without significant disruption throughout the pandemic by maximizing telework while still protecting personally identifiable information in confidential sentencing documents. The Commission continually audits and updates its cybersecurity measures and expands its technological capacity and must continue investing in these areas to remain current, secure, and agile to respond to changing circumstances.

With these investments, the Commission has met the growing demand for its work products, information, and services. Innovations such as the *Interactive Data Analyzer*, mobile *Guidelines App*, and most recently the *Judiciary Sentencing Information* tool have

made the Commission’s guidelines, data, and information more accessible and user-friendly. The Commission continually releases sentencing data and publications addressing timely topics from fentanyl offenses to compassionate release in light of the pandemic. The Commission expects this heightened interest in, and use of, its work products to extend through FY 2023 and beyond.

The Commission’s FY 2023 budget request is \$21,892,000 to maintain current services. The Commission is not requesting any program increases. The Commission uses available resources efficiently and minimizes costs in fulfilling its duties.

ONGOING ACTIVITIES

Policy Priorities

Beginning in FY 2021 and continuing into FY 2022, the Commission has operated with only one voting commissioner—Senior U.S. District Judge Charles R. Breyer (N.D. California)—and therefore lacked the minimum four affirmative votes required to promulgate amendments to the federal sentencing guidelines. While awaiting the appointment of new commissioners, the Commission continues to work on several important policy priorities, chief among them the First Step Act of 2018 (Pub. L. No. 115-391). While most of the Act is directed at the Executive Branch, the Commission must promulgate guidelines amendments to implement increasingly pressing statutory changes concerning compassionate release (18 U.S.C. § 3582(c)(1)(A)) and safety valve relief from certain mandatory minimum penalties (18 U.S.C. § 3553(f)).

The Commission is robustly collecting, analyzing, and reporting data on the impact of the First Step Act. In August 2020, the Commission released *The First Step Act of 2018: One Year of Implementation*, and throughout FY 2021 the Commission released updated data regarding compassionate release motions filed during the pandemic. In FY 2022, the Commission will continue updating that data and issue a comprehensive report on the use of compassionate release during the pandemic.

This work will position the Commission to act as soon as possible after it is reconstituted. The First Step Act expanded the availability of compassionate release by authorizing defendants to file motions under 18 U.S.C. § 3582(c)(1)(A), whereas before only the Director of the Bureau of Prisons could file such motions. Many courts of appeal have since held that the Commission’s policy statement governing compassionate release, §1B1.13, does not apply to motions filed by the defendant. This is cause for concern for two reasons. First, in the absence of guidance from the Commission, courts are left to fill the void themselves, a difficult task to accomplish in the uniform manner contemplated by either the Sentencing Reform Act or the First Step Act itself.

Second, this absence of guidance comes at a time when courts could use it the most, as they have been inundated with compassionate release motions during the pandemic. With the cooperation of the Federal Bureau of Prisons (BOP) and the courts, the Commission has identified over 20,000 compassionate release motions that were decided by the courts from January 2020 through June 2021. Courts granted 3,608 motions and denied 16,957 motions.

The statutory safety valve expansion also requires action as soon as possible because the two-level reduction in the drug guideline is still tied to outdated statutory criteria. Responding to this aspect of the First Step Act, however, may be complicated by an emerging circuit split between the 9th and 11th Circuit Courts of Appeals interpreting the revised eligibility criteria at 18 U.S.C. § 3553(f) regarding criminal history. The sentencing impact of these two differing interpretations is significant, and the Commission will continue to monitor the ensuing case law to inform its response to this part of the First Step Act.

Conducting Research

Research is a critical part of the Commission's mission. The Commission regularly analyzes data to monitor how courts sentence offenders and use the guidelines, and the agency routinely uses these analyses to inform its proposed changes to the guidelines. The Commission publishes many of its analyses as a resource for Congress and the criminal justice community.

In recent years, the Commission has focused on recidivism research to help inform Congress and others on how best to protect public safety while targeting prison resources on the most dangerous offenders. In March 2021, the Commission released a report on *Armed Career Criminals in the Federal System*. In FY 2019, 84 percent of armed career criminals had prior convictions for violent offenses, and 58 percent had three or more such convictions. Their recidivism rates, however, vary significantly depending on whether and how many prior convictions they had for violent offenses. While the recidivism rate was 59 percent for all armed career criminals released between 2009 and 2011, it was only 36 percent for armed career criminals with prior drug trafficking convictions but no prior violent convictions.

In FY 2020, the Commission launched a new recidivism series studying federal offenders released from incarceration or sentenced to a term of probation in 2010, combining data regularly collected by the Commission with data compiled from criminal history records from the Federal Bureau of Investigation. In September 2021, the Commission published the first in the series, *Recidivism of Federal*

Offenders Released in 2010, which provides an overview of recidivism for these offenders and information on key offender and offense characteristics related to recidivism. This report found that over an eight-year follow-up period, nearly one-half (49.3%) of federal offenders released in 2010 were rearrested, with a median time to rearrest of 19 months. These figures are virtually the same as for federal offenders released in 2005 even as two intervening major developments in the federal criminal justice system occurred: the Supreme Court’s decision in *United States v. Booker*, which rendered the guidelines advisory, and increased use of evidence-based practices in federal supervision.

In FY 2022, the Commission will issue recidivism reports focusing on firearms offenders, drug trafficking offenders, and violent offenders. The Commission also plans to update its prior study of the relationship between the length of imprisonment and recidivism, and to issue a new report examining BOP programming and recidivism.

The Commission also continues to research specific issues of ongoing congressional concern and deliberation. In January 2021, the Commission released a report on the emerging problem of fentanyl and fentanyl analogues. *Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns* observed that since FY 2015, the number of fentanyl offenders has increased 3,592 percent, to 886 offenders. And since FY 2016, the number of fentanyl analogue offenders has increased 5,725 percent, to 233 offenders. These are particularly dangerous substances – 30 times more potent than heroin – and they account for over three-quarters of all drug trafficking offenders whose offense of conviction established that death or serious bodily injury resulted from use of the substance.

In FY 2021, the Commission released two reports updating its 2012 report to Congress on another area of concern, child pornography offenses. The first, *Federal Sentencing of Child Pornography: Non-Production Offenses*, focuses on offenders sentenced under §2G2.2 for possession, receipt, and distribution of child pornography in FY 2019. The report concludes that the guideline sentencing enhancements have not kept pace with technological advancements and, as a result, §2G2.2 is both overinclusive and underinclusive. Because §2G2.2 is largely the result of statutory mandatory minimum penalties, congressional directives, and direct amendments to the guidelines by Congress in the PROTECT Act of 2003, the report reiterates the earlier recommendation that Congress expressly authorize the Commission to amend the guideline to more effectively differentiate among offenders based upon the seriousness of the offense and culpability of the offender.

The second report, *Federal Sentencing of Child Pornography: Production Offenses*, provides the Commission’s most in-depth study of child pornography production offenses with a thorough analysis of three primary factors: the offenders’ proximity to the victim,

participation in the production, and propensity to engage in other abusive behaviors. The report provides new insights into how offenders exploit victims and technology to produce child pornography, and the factors courts consider in imposing sentences for these offenses.

The Commission also plans to continue issuing research reports of topical interest such as its October 2021 publication, *Federal Offenders Who Served in the Armed Forces*. Over 10,000 veteran offenders were in the custody of the BOP at the end of 2019. This report analyzes for the first time the relatively small number of veterans each year who are sentenced under the guidelines, examines their prior military service, the crimes they committed, and how their military service was considered at sentencing.

Collecting, Analyzing, and Reporting Sentencing Data

Each year the Commission collects and analyzes data regarding every felony and Class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, plea agreement, Presentence Report, Judgment and Commitment Order, and Statement of Reasons form. The Commission analyzes these documents to report information of interest and importance to policymakers and the federal criminal justice community.

In FY 2021, the Commission received approximately 270,000 documents for more than 56,000 original sentencings and more than 4,500 resentencings or other modifications of a sentence. The Commission is able to process this large volume of sentencing documents by continuously investing in means to automatically extract as much data and information as possible from court documents. These efforts have not only improved efficiency and accuracy of its data collection, but also have expanded the type of information the Commission can collect and analyze on a routine basis. For example, the Commission now analyzes and reports data regarding the nature of more than 300,000 criminal history events each year, a recent development that could not be maintained without its technology investments. This new criminal history dataset is a valuable resource for both researchers and policy makers and has been used by the Commission to respond to numerous congressional inquiries.

Each year, the Commission compiles its annual sentencing dataset into one comprehensive publication. In March 2021, the Commission released the *2020 Annual Report and Sourcebook of Federal Sentencing Statistics*. The Sourcebook provides detailed

analyses of the 64,565 offenders sentenced in FY 2020, and a companion piece providing an easy-to-digest overview of the data was published in April 2021.

In June 2020, the Commission launched a *Interactive Data Analyzer* (IDA). With IDA, Congress, judges, litigants, the media, and the general public can now easily and independently analyze sentencing data by state, district, or circuit, and can refine their inquiry to data relating to the specific type of crime of interest. This new interactive tool uses the most current data visualization techniques and technology that will enable the Commission to easily add features and new data in years to come.

In September 2021, the Commission released a new tool called *Judicial Sentencing Information* (JSIN). JSIN is an online sentencing data resource that was specifically developed with the needs of judges in mind, although it is also available to litigants and the public at large through the Commission's website. The platform provides quick and easy online access to sentencing data for similarly situated defendants, including the types of sentences imposed and average and median sentences of imprisonment. JSIN expands upon the Commission's longstanding practice of responding to requests from federal judges for sentencing data by making the data most often requested more broadly and easily available.

Congressional Data Inquiries and Briefings

Each year, the Commission receives frequent requests from Congress to complete prison and sentencing impact assessments of proposed legislation using real-time sentencing data. These assessments are often complex, time-sensitive, and require the Commission's highly specialized resources.

The Commission also provides circuit, district, and state-wide data analyses to the House and Senate Judiciary Committees and on an as-requested basis, to other members of Congress.

Specialized Training

The Commission continues to provide specialized seminars, workshops, and training programs for judges, probation officers, law clerks, prosecutors, and defense attorneys on application of the guidelines and federal sentencing generally. In FYs 2020 and 2021, the Commission trained judges, attorneys, probation officers, law clerks, and others from nearly all 94 federal districts.

The Commission's previous investments in eLearning, remote training platforms, and other online resources have provided effective and efficient training throughout the pandemic. In FY 2021, the Commission conducted 115 virtual training sessions, and more than 13,000 individuals attended live, online, or on-demand prerecorded training session. This three-fold increase over the number of trainees in a typical year could not have been achieved absent the Commission's investments in technology.

As the Commission continues to build its online resources, training-related web activity continues to increase. The interactive quarterly newsletter the Commission launched in FY 2020 garnered more than 2,000 views in FY 2021, and views of the Commission's online case law resources more than doubled in FY 2021.

The Commission also maintains its HelpLine that responds to numerous questions each week from judges, practitioners, and probation officers regarding proper guideline application. In order of frequency in FY 2021, HelpLine was accessed by United States Probation Officers, Assistant United States Attorneys, Criminal Justice Act panel attorneys, the private defense bar, assistant federal public defenders, and court staff including district court and appellate judges, their law clerks, and circuit staff attorneys.

In FYs 2022 and 2023, the Commission plans to continue expanding its online and remote learning opportunities, while standing ready to resume in-person training offerings when conditions permit.

Public Interface

The Commission continues to expand and improve its public outreach efforts in a cost-efficient manner. In FY 2021, the Commission's website received approximately 1.9 million hits and averaged approximately 37,000 visitors per month. For the third consecutive year, these numbers reflect an increase in sessions (+8%), and pages viewed (+9%) from the previous year. The Commission also leverages social media and uses cloud communication tools to disseminate information broadly and efficiently and to provide frequent electronic public updates on its work.

FISCAL YEAR 2022 APPROPRIATIONS

In the absence of an enacted FY 2022 appropriation, the judiciary built the FY 2023 discretionary budget request for the United States Sentencing Commission on an assumed FY 2022 appropriation of \$20,829,000, which is the current services level.

For bill language, the judiciary used the relevant language from H.R. 4502, which includes the House-passed version of the Financial Services and General Government appropriations bill, 2022, as the closest approximation of eventual enacted FY 2022 appropriations language, updated with the assumed funding level as described above.

After full year FY 2022 appropriations are enacted, the judiciary will re-estimate its FY 2023 budget request and transmit to the Appropriations Committees any changes to FY 2023 appropriation requirements and bill language.

JUSTIFICATION OF CHANGES

The FY 2023 budget request of \$21,892,000 represents an overall increase of \$1,063,000, or 5.1 percent, over the FY 2022 assumed appropriation of \$20,829,000. The Commission's request reflects an increase over FY 2022 to account for inflationary increases and adjustments for personnel costs to maintain current services. The Commission requests no program increases for FY 2023.

Adjustments to maintain current services include funds for pay and benefits, cost increases for current staff, and adjustments for ongoing activities, such as inflationary increases in contract rates and charges for services, supplies, equipment, and other Commission needs.

ADJUSTMENTS TO BASE TO MAINTAIN CURRENT SERVICES

A. PERSONNEL

Pay and Benefit Adjustments

1. Proposed 2023 pay adjustment

Requested Increase: \$612,000

The judiciary is assuming federal pay rates will increase by 4.6 percent in January 2023. The requested increase provides for the cost of nine months of the anticipated pay raise in FY 2023, from January 2023 to September 2023. (If the pay adjustment

included in the President's FY 2023 budget request is different from this 4.6 percent guidance, the judiciary will revise this line item in its FY 2023 budget re-estimate.)

2. Annualization of 2022 pay adjustment

Requested Increase: \$127,000

The requested increase provides for the annualized costs of the 2022 pay adjustment for Employment Cost Index (ECI) and locality pay. As a result of an ECI and locality adjustment, federal pay rates increased by an average of 2.7 percent, effective as of January 2022. The requested increase provides for the cost of three months (from October 2022 to December 2022) of the enacted 2022 pay increase in FY 2023.

3. Promotions and within-grade increases

Requested Increase: \$170,000

The requested increase provides for promotions and within-grade increases for personnel. The salary plan for judicial support personnel provides for periodic within-grade increases for staff who receive at least a satisfactory performance rating.

4. Benefits increases

a. Health benefits

Requested Increase: \$82,000

Based on information from the Office of Personnel Management, health benefit premium contributions are

projected to increase by an average of 2.4 percent both in January 2022 and January 2023. The requested increase annualizes the 2022 premium increase and includes a nine-month provision for the increase anticipated for FY 2023.

b. FICA adjustment

Requested Increase: \$9,000

Based on information from the Social Security Administration, employer contributions to the Old Age, Survivor, and Disability Insurance (OASDI) portion of the FICA tax will increase in 2022. The salary cap for OASDI increased from \$142,800 to \$147,000 in January 2022. The requested amount is needed to pay the Commission's contribution in FY 2023.

5. One less compensable day

Requested Decrease: (\$67,000)

There is one less compensable day in FY 2023 than in FY 2022. The requested decrease adjusts for personnel compensation and benefits associated with one less compensable day.

B. OTHER ADJUSTMENTS

General Inflationary Adjustments

6. Inflationary increases in charges for contracts, services, supplies, and equipment

Requested Increase: \$130,000

Consistent with guidance from the Office of Management and Budget, this request of \$130,000 is required to fund inflationary increases of 2.0 percent for operating expenses such as travel, communications, printing, contractual services, supplies and materials, and furniture and equipment.